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GENERAL ELECTRIC COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

11 JAMES GUTHRIE, TONY DAVIDSON,
12 RONALD ZERANGUE, SAMUEL
13 RESTER, JOHN GRAY, ELMER
PAROLINI, WAYNE DUFALT, JESSE
BEVERLY, JR..

14 Plaintiffs.

15 ||

16 GENERAL ELECTRIC COMPANY, et
al.,

Defendants.

CASE NO. C 07-2542 JL

**GENERAL ELECTRIC COMPANY'S
ANSWER TO COMPLAINT FOR
ASBESTOS PERSONAL
INJURY/PRODUCTS LIABILITY;
DEMAND FOR JURY TRIAL;
CERTIFICATION OF INTERESTED
ENTITIES**

20 Defendant GENERAL ELECTRIC COMPANY (“GE”) hereby answers for itself alone
21 and no others the Complaint filed on April 28, 2006, as to plaintiffs James Guthrie, Tony
22 Davidson, Ronald Zerangue, Samuel Rester, John Gray, Elmer Parolini, Wayne Dufault, and
23 Jesse Beverly, Jr. (collectively, “Plaintiffs”) as follows:

24 1. To the extent that paragraph 1 of the complaint consists of allegations of fact as to
25 Plaintiffs, GE lacks sufficient knowledge or information to form a belief as to the truth of the
26 allegations of paragraph 1, and on such basis the allegations are denied.

27 2. To the extent that paragraph 2 of the complaint consists of allegations of fact as to
28 Plaintiffs, GE lacks sufficient knowledge or information to form a belief as to the truth of the

1 allegations of paragraph 2, and on such basis the allegations are denied. To the extent that
 2 paragraph 2 of the complaint consists of allegations of fact as to other defendants, GE lacks
 3 sufficient knowledge or information to form a belief as to the truth of the allegations of
 4 paragraph 2, and on such basis the allegations are denied. To the extent that paragraph 2 of the
 5 complaint consists of allegations of fact as to GE, GE denies such allegations.

6 3. To the extent that paragraph 3 of the complaint consists of allegations of fact as to
 7 Plaintiffs, GE lacks sufficient knowledge or information to form a belief as to the truth of the
 8 allegations of paragraph 3, and on such basis the allegations are denied. To the extent that
 9 paragraph 3 of the complaint consists of allegations of fact as to other defendants, GE lacks
 10 sufficient knowledge or information to form a belief as to the truth of the allegations of
 11 paragraph 3, and on such basis the allegations are denied. To the extent that paragraph 3 of the
 12 complaint consists of allegations of fact as to GE, GE denies such allegations.

13 4. To the extent that paragraph 4 of the complaint consists of allegations of fact as to
 14 Plaintiffs, GE lacks sufficient knowledge or information to form a belief as to the truth of the
 15 allegations of paragraph 4, and on such basis the allegations are denied. To the extent that
 16 paragraph 4 of the complaint consists of allegations of fact as to other defendants, GE lacks
 17 sufficient knowledge or information to form a belief as to the truth of the allegations of
 18 paragraph 4, and on such basis the allegations are denied. To the extent that paragraph 4 of the
 19 complaint consists of allegations of fact as to GE, GE denies such allegations. GE denies the
 20 allegation that each plaintiff claims damages for an asbestos-related disease arising from an
 21 identical series of occurrences. GE denies the allegation that each and every allegation of each
 22 plaintiff regarding the nature of their asbestos-related diseases, the nature of asbestos, the
 23 propensity of asbestos to cause disease, the criteria for diagnosis of disease are all identical.

24 5. To the extent that paragraph 6 of the complaint consists of allegations of fact as to
 25 Plaintiffs, GE lacks sufficient knowledge or information to form a belief as to the truth of the
 26 allegations of paragraph 5, and on such basis the allegations are denied. To the extent that
 27 paragraph 6 of the complaint consists of allegations of fact as to other defendants, GE lacks

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1 sufficient knowledge or information to form a belief as to the truth of the allegations of
 2 paragraph 6, and on such basis the allegations are denied.

3 6. To the extent that paragraph 6 of the complaint consists of conclusions of law, GE
 4 is not required to respond to it. To the extent that paragraph 6 of the complaint consists of
 5 allegations of fact as to other defendants, GE lacks sufficient knowledge or information to form
 6 a belief as to the truth of the allegations of paragraph 6, and on such basis the allegations are
 7 denied.

8 7. To the extent that paragraph 7 of the complaint consists of allegations of fact as to
 9 Plaintiffs, GE lacks sufficient knowledge or information to form a belief as to the truth of the
 10 allegations of paragraph 7, and on such basis the allegations are denied. To the extent that
 11 paragraph 7 of the complaint consists of allegations of fact as to other defendants, GE lacks
 12 sufficient knowledge or information to form a belief as to the truth of the allegations of
 13 paragraph 7, and on such basis the allegations are denied. GE denies that it is a corporation
 14 incorporated under the laws of Connecticut. GE admits that its principal place of business is in
 15 Connecticut. GE lacks sufficient knowledge or information to form a belief as to the truth of the
 16 allegation that this court has original jurisdiction under 25 USC § 1332, and on such basis the
 17 allegation is denied.

18 8. To the extent that paragraph 8 of the complaint consists of conclusions of law, GE
 19 is not required to respond to it. To the extent that paragraph 8 of the complaint consists of
 20 allegations of fact as to other defendants, GE lacks sufficient knowledge or information to form
 21 a belief as to the truth of the allegations of paragraph 8, and on such basis the allegations are
 22 denied. To the extent that paragraph 8 of the complaint consists of allegations of fact as to
 23 Plaintiffs, GE lacks sufficient knowledge or information to form a belief as to the truth of the
 24 allegations of paragraph 8, and on such basis the allegations are denied. GE lacks sufficient
 25 knowledge or information to form a belief as to the truth of Plaintiffs' allegation that the
 26 Northern District of California is the proper venue for this case, and on such basis the allegation
 27 is denied.

28 9. To the extent that paragraph 9 of the complaint consists of conclusions of law, GE

1 is not required to respond to it. To the extent that paragraph 9 of the complaint consists of
 2 allegations of fact as to other defendants, GE lacks sufficient knowledge or information to form
 3 a belief as to the truth of the allegations of paragraph 9, and on such basis the allegations are
 4 denied. To the extent that paragraph 9 of the complaint consists of allegations of fact as to
 5 Plaintiffs, GE lacks sufficient knowledge or information to form a belief as to the truth of the
 6 allegations of paragraph 9, and on such basis the allegations are denied. To the extent that
 7 paragraph 10 of the complaint consists of allegations of fact as to GE, GE lacks sufficient
 8 knowledge or information to form a belief as to the truth of the allegations of paragraph 9, and on
 9 such basis the allegations are denied.

10 10. To the extent that paragraph 10 of the complaint consists of allegations of fact as
 11 to other defendants, GE lacks sufficient knowledge or information to form a belief as to the truth
 12 of the allegations of paragraph 10, and on such basis the allegations are denied. GE admits that,
 13 in the past, it manufactured, distributed, supplied and sold certain products which contained
 14 some quantity of asbestos and/or had component parts which may have contained some quantity
 15 of asbestos, during a time period which may or may not be relevant to this case. Except to the
 16 extent admitted, GE denies all other allegations of fact as to GE in paragraph 10 of the
 17 complaint.

18 11. To the extent that paragraph 11 of the complaint consists of conclusions of law,
 19 GE is not required to respond to it. To the extent that paragraph 11 of the complaint consists of
 20 allegations of fact as to other defendants, GE lacks sufficient knowledge or information to form
 21 a belief as to the truth of the allegations of paragraph 11, and on such basis the allegations are
 22 denied. To the extent that paragraph 11 of the complaint consists of allegations of fact as to
 23 Plaintiffs, GE lacks sufficient knowledge or information to form a belief as to the truth of the
 24 allegations of paragraph 11, and on such basis the allegations are denied. To the extent that
 25 paragraph 11 of the complaint consists of allegations of fact as to GE, GE denies such
 26 allegations.

27 12. To the extent that paragraph 12 of the complaint consists of conclusions of law,
 28 GE is not required to respond to it. To the extent that paragraph 12 of the complaint consists of

1 allegations of fact as to other defendants, GE lacks sufficient knowledge or information to form
 2 a belief as to the truth of the allegations of paragraph 12, and on such basis the allegations are
 3 denied. To the extent that paragraph 12 of the complaint consists of allegations of fact as to GE,
 4 GE denies such allegations.

5 13. To the extent that paragraph 13 of the complaint consists of allegations of fact as
 6 to other defendants, GE lacks sufficient knowledge or information to form a belief as to the truth
 7 of the allegations of paragraph 13, and on such basis the allegations are denied. To the extent
 8 that paragraph 13 of the complaint consists of allegations of fact as to Plaintiffs, GE lacks
 9 sufficient knowledge or information to form a belief as to the truth of the allegations of
 10 paragraph 13, and on such basis the allegations are denied. To the extent that paragraph 13 of the
 11 complaint consists of allegations of fact as to GE, GE denies such allegations.

12 14. To the extent that paragraph 14 of the complaint consists of conclusions of law,
 13 GE is not required to respond to it. To the extent that paragraph 14 of the complaint consists of
 14 allegations of fact as to other defendants, GE lacks sufficient knowledge or information to form
 15 a belief as to the truth of the allegations of paragraph 14, and on such basis the allegations are
 16 denied. To the extent that paragraph 14 of the complaint consists of allegations of fact as to
 17 Plaintiffs, GE lacks sufficient knowledge or information to form a belief as to the truth of the
 18 allegations of paragraph 14, and on such basis the allegations are denied. To the extent that
 19 paragraph 14 of the complaint consists of allegations of fact as to GE, GE denies such
 20 allegations.

21 15. To the extent that paragraph 15 of the complaint consists of allegations of fact as
 22 to other defendants, GE lacks sufficient knowledge or information to form a belief as to the truth
 23 of the allegations of paragraph 15, and on such basis the allegations are denied. To the extent
 24 that paragraph 16 of the complaint consists of allegations of fact as to Plaintiffs, GE lacks
 25 sufficient knowledge or information to form a belief as to the truth of the allegations of
 26 paragraph 15, and on such basis the allegations are denied. To the extent that paragraph 15 of the
 27 complaint consists of allegations of fact as to GE, GE denies such allegations.

28 16. GE admits that, over time, inhalation or ingestion of asbestos fibers can cause

1 lung disease and cancer. Except to the extent admitted, GE denies all allegations of paragraph
 2 17.

3 17. To the extent that paragraph 17 of the complaint consists of allegations of fact as
 4 to Plaintiffs, GE lacks sufficient knowledge or information to form a belief as to the truth of the
 5 allegations of paragraph 17, and on such basis the allegations are denied.

6 18. To the extent that paragraph 18 of the complaint consists of conclusions of law,
 7 GE is not required to respond to it. To the extent that paragraph 18 of the complaint consists of
 8 allegations of fact as to other defendants, GE lacks sufficient knowledge or information to form
 9 a belief as to the truth of the allegations of paragraph 18, and on such basis the allegations are
 10 denied. To the extent that paragraph 18 of the complaint consists of allegations of fact as to
 11 Plaintiffs, GE lacks sufficient knowledge or information to form a belief as to the truth of the
 12 allegations of paragraph 18, and on such basis the allegations are denied. To the extent that
 13 paragraph 18 of the complaint consists of allegations of fact as to GE, GE denies such
 14 allegations.

15 19. To the extent that paragraph 19 of the complaint consists of conclusions of law,
 16 GE is not required to respond to it. To the extent that paragraph 19 of the complaint consists of
 17 allegations of fact as to other defendants, GE lacks sufficient knowledge or information to form
 18 a belief as to the truth of the allegations of paragraph 19, and on such basis the allegations are
 19 denied. To the extent that paragraph 19 of the complaint consists of allegations of fact as to
 20 Plaintiffs, GE lacks sufficient knowledge or information to form a belief as to the truth of the
 21 allegations of paragraph 19, and on such basis the allegations are denied. To the extent that
 22 paragraph 19 of the complaint consists of allegations of fact as to GE, GE denies such
 23 allegations.

24 20. To the extent that paragraph 20 of the complaint consists of conclusions of law,
 25 GE is not required to respond to it. To the extent that paragraph 20 of the complaint consists of
 26 allegations of fact as to other defendants, GE lacks sufficient knowledge or information to form
 27 a belief as to the truth of the allegations of paragraph 20, and on such basis the allegations are
 denied. To the extent that paragraph 20 of the complaint consists of allegations of fact as to

1 Plaintiffs, GE lacks sufficient knowledge or information to form a belief as to the truth of the
2 allegations of paragraph 20, and on such basis the allegations are denied. To the extent that
3 paragraph 20 of the complaint consists of allegations of fact as to GE, GE denies such
4 allegations.

5 21. To the extent that paragraph 21 of the complaint consists of conclusions of law,
6 GE is not required to respond to it. To the extent that paragraph 21 of the complaint consists of
7 allegations of fact as to other defendants, GE lacks sufficient knowledge or information to form
8 a belief as to the truth of the allegations of paragraph 21, and on such basis the allegations are
9 denied. To the extent that paragraph 21 of the complaint consists of allegations of fact as to GE,
10 GE denies such allegations.

11 22. To the extent that paragraph 22 of the complaint consists of conclusions of law,
12 GE is not required to respond to it. To the extent that paragraph 22 of the complaint consists of
13 allegations of fact as to other defendants, GE lacks sufficient knowledge or information to form
14 a belief as to the truth of the allegations of paragraph 22, and on such basis the allegations are
15 denied. To the extent that paragraph 22 of the complaint consists of allegations of fact as to GE,
16 GE denies such allegations.

17 23. To the extent that paragraph 23 of the complaint consists of conclusions of law,
18 GE is not required to respond to it. To the extent that paragraph 23 of the complaint consists of
19 allegations of fact as to other defendants, GE lacks sufficient knowledge or information to form
20 a belief as to the truth of the allegations of paragraph 23, and on such basis the allegations are
21 denied. To the extent that paragraph 23 of the complaint consists of allegations of fact as to GE,
22 GE denies such allegations.

23 24. GE incorporates by reference as though fully set forth herein paragraphs 1 through
24 23 of this Answer.

25 25. To the extent that paragraph 25 of the complaint consists of allegations of fact as
26 to other defendants, GE lacks sufficient knowledge or information to form a belief as to the truth
27 of the allegations of paragraph 25, and on such basis the allegations are denied. To the extent

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1 that paragraph 25 of the complaint consists of allegations of fact as to GE, GE denies such
 2 allegations.

3 26. To the extent that paragraph 26 of the complaint consists of conclusions of law,
 4 GE is not required to respond to it. To the extent that paragraph 26 of the complaint consists of
 5 allegations of fact as to other defendants, GE lacks sufficient knowledge or information to form
 6 a belief as to the truth of the allegations of paragraph 26, and on such basis the allegations are
 7 denied. To the extent that paragraph 26 of the complaint consists of allegations of fact as to
 8 Plaintiffs, GE lacks sufficient knowledge or information to form a belief as to the truth of the
 9 allegations of paragraph 26, and on such basis the allegations are denied. To the extent that
 10 paragraph 26 of the complaint consists of allegations of fact as to GE, GE denies such
 11 allegations.

12 27. To the extent that paragraph 27 of the complaint consists of allegations of fact as
 13 to other defendants, GE lacks sufficient knowledge or information to form a belief as to the truth
 14 of the allegations of paragraph 27, and on such basis the allegations are denied. To the extent
 15 that paragraph 27 of the complaint consists of allegations of fact as to Plaintiffs, GE lacks
 16 sufficient knowledge or information to form a belief as to the truth of the allegations of
 17 paragraph 27, and on such basis the allegations are denied. To the extent that paragraph 27 of the
 18 complaint consists of allegations of fact as to GE, GE denies such allegations. GE lacks
 19 sufficient knowledge or information to respond to the allegation that exposed persons did not
 20 know of the substantial danger of using said products and, on that basis, denies it.

21 28. To the extent that paragraph 28 of the complaint consists of allegations of fact as
 22 to other defendants, GE lacks sufficient knowledge or information to form a belief as to the truth
 23 of the allegations of paragraph 28, and on such basis the allegations are denied. To the extent
 24 that paragraph 28 of the complaint consists of allegations of fact as to GE, GE denies such
 25 allegations.

26 29. To the extent that paragraph 29 of the complaint consists of allegations of fact as
 27 to other defendants, GE lacks sufficient knowledge or information to form a belief as to the truth
 28 of the allegations of paragraph 29, and on such basis the allegations are denied. To the extent

1 that paragraph 29 of the complaint consists of allegations of fact as to GE, GE denies such
2 allegations.

3 30. To the extent that paragraph 30 of the complaint consists of allegations of fact as
4 to other defendants, GE lacks sufficient knowledge or information to form a belief as to the truth
5 of the allegations of paragraph 30, and on such basis the allegations are denied. To the extent
6 that paragraph 30 of the complaint consists of allegations of fact as to GE, GE denies such
7 allegations.

8 31. To the extent that paragraph 31 of the complaint consists of allegations of fact as
9 to other defendants, GE lacks sufficient knowledge or information to form a belief as to the truth
10 of the allegations of paragraph 31, and on such basis the allegations are denied. To the extent
11 that paragraph 31 of the complaint consists of allegations of fact as to Plaintiffs, GE lacks
12 sufficient knowledge or information to form a belief as to the truth of the allegations of
13 paragraph 31, and on such basis the allegations are denied. To the extent that paragraph 31 of the
14 complaint consists of allegations of fact as to GE, GE denies such allegations.

15 32. To the extent that paragraph 32 of the complaint consists of conclusions of law,
16 GE is not required to respond to it. To the extent that paragraph 32 of the complaint consists of
17 allegations of fact as to other defendants, GE lacks sufficient knowledge or information to form
18 a belief as to the truth of the allegations of paragraph 32, and on such basis the allegations are
19 denied. To the extent that paragraph 32 of the complaint consists of allegations of fact as to GE,
20 GE denies such allegations.

21 33. To the extent that paragraph 33 of the complaint consists of allegations of fact as
22 to other defendants, GE lacks sufficient knowledge or information to form a belief as to the truth
23 of the allegations of paragraph 33, and on such basis the allegations are denied. To the extent
24 that paragraph 33 of the complaint consists of allegations of fact as to Plaintiffs, GE lacks
25 sufficient knowledge or information to form a belief as to the truth of the allegations of
26 paragraph 33, and on such basis the allegations are denied. To the extent that paragraph 33 of the
27 complaint consists of allegations of fact as to GE, GE denies such allegations.

28 34. To the extent that paragraph 34 of the complaint consists of allegations of fact as

1 to other defendants, GE lacks sufficient knowledge or information to form a belief as to the truth
 2 of the allegations of paragraph 34, and on such basis the allegations are denied. To the extent
 3 that paragraph 34 of the complaint consists of allegations of fact as to Plaintiffs, GE lacks
 4 sufficient knowledge or information to form a belief as to the truth of the allegations of
 5 paragraph 34, and on such basis the allegations are denied. To the extent that paragraph 34 of the
 6 complaint consists of allegations of fact as to GE, GE denies such allegations.

7 35. To the extent that paragraph 35 of the complaint consists of allegations of fact as
 8 to other defendants, GE lacks sufficient knowledge or information to form a belief as to the truth
 9 of the allegations of paragraph 35, and on such basis the allegations are denied. To the extent
 10 that paragraph 35 of the complaint consists of allegations of fact as to Plaintiffs, GE lacks
 11 sufficient knowledge or information to form a belief as to the truth of the allegations of
 12 paragraph 35, and on such basis the allegations are denied. To the extent that paragraph 35 of the
 13 complaint consists of allegations of fact as to GE, GE denies such allegations.

14 **PRAYER**

15 GE further denies that Plaintiffs are entitled to any damages to the extent Plaintiffs seek
 16 damages from GE and denies that Plaintiffs are entitled to any relief from GE to the extent
 17 Plaintiffs seek any relief from GE; further answering, GE lacks information or knowledge
 18 sufficient to respond to each and every allegation in Plaintiffs' prayer for judgment and, on that
 19 basis, denies them.

20 **SEPARATE AND ADDITIONAL AFFIRMATIVE DEFENSES**

21 36. By alleging the Separate and Additional Affirmative Defenses set forth below, GE
 22 is not in any way agreeing or conceding that it has the burden of proof or burden of persuasion on
 23 any of these issues.

24 **FIRST AFFIRMATIVE DEFENSE**

25 37. GE alleges that said complaint and each cause of action therein fails to state facts
 26 sufficient to constitute a cause of action against Defendant.

27 **SECOND AFFIRMATIVE DEFENSE**

28 38. GE alleges that the causes of action, if any, attempted to be stated and set forth in

1 said complaint are barred by the applicable statutes of limitations, including, but not limited to,
 2 the provisions of Code of Civil Procedure Sections 335.1, 338, 340.2. and 340(3).

3 **THIRD AFFIRMATIVE DEFENSE**

4 39. GE alleges that the causes of action, if any, attempted to be stated and set forth in
 5 said complaint are barred by laches.

6 **FOURTH AFFIRMATIVE DEFENSE**

7 40. GE alleges that the causes of action, if any, attempted to be stated in Plaintiffs'
 8 complaint are barred in whole or in part by the equitable doctrine of waiver and estoppel.

9 **FIFTH AFFIRMATIVE DEFENSE**

10 41. GE alleges that Plaintiffs and others were negligent or otherwise at fault in and
 11 about the matters referred to in said complaint, and that such negligence and/or other fault bars or
 12 diminishes Plaintiffs' recovery against GE.

13 **SIXTH AFFIRMATIVE DEFENSE**

14 42. GE alleges that Plaintiffs were solely negligent in and about the matters alleged in
 15 said complaint and that such negligence on the part of Plaintiffs was the sole legal cause of the
 16 injuries and damages complained of by Plaintiffs, if any there were.

17 **SEVENTH AFFIRMATIVE DEFENSE**

18 43. GE alleges that Plaintiffs assumed the risk of the matters referred to in said
 19 complaint, that Plaintiffs knew and appreciated the nature of the risk, and that Plaintiffs
 20 voluntarily accepted the risk.

21 **EIGHTH AFFIRMATIVE DEFENSE**

22 44. GE is informed and believes and thereon alleges that Plaintiffs misused and
 23 abused the products referred to in said complaint, and failed to follow instructions, and that such
 24 misuse, abuse and failure to follow instructions on the part of Plaintiffs proximately caused and
 25 contributed to the injuries and damages complained of in said complaint, if any there were.

26 **NINTH AFFIRMATIVE DEFENSE**

27 45. GE alleges that if Plaintiffs sustained injuries attributable to the use of any
 28 product manufactured, supplied, or distributed by GE, which allegations are expressly denied, the

1 injuries were solely caused by and attributable to the unreasonable, unforeseeable, and
2 inappropriate purpose and improper use which was made of the product.

TENTH AFFIRMATIVE DEFENSE

4 46. GE alleges that if there was any negligence proximately causing the injuries or
5 damages sustained by Plaintiffs, if any, such negligence, if any, was solely that of defendants,
6 firms, persons, or entities other than GE.

ELEVENTH AFFIRMATIVE DEFENSE

8 47. GE alleges that there is no privity between Plaintiffs and GE.

TWELFTH AFFIRMATIVE DEFENSE

10 48. GE alleges that it gave no warranties, either express or implied, to Plaintiffs and
11 that neither Plaintiffs nor others ever notified GE of any claims of breach of warranty, if any
12 there were.

THIRTEENTH AFFIRMATIVE DEFENSE

14 49. GE alleges that said complaint and each cause of action therein is barred with
15 respect to GE by the provisions of the Workers Compensation Act, including but not limited to
16 Sections 3600, 3601, and 5300 of the Labor Code of the State of California.

FOURTEENTH AFFIRMATIVE DEFENSE

18 50. GE alleges that if there was any negligence proximately causing the injuries or
19 damages, if any, sustained by Plaintiffs, such negligence, if any, is collateral negligence, as that
20 term is used and defined in Restatement 2d Torts, Section 426 and derivative authority.

FIFTEENTH AFFIRMATIVE DEFENSE

22 51. GE alleges that at the time of the matters referred to in the complaint, Plaintiffs
23 were employed by employers other than GE and were entitled to and received workers'
24 compensation benefits from their employers; and that if there was any negligence proximately
25 causing the injuries and damages sustained by Plaintiffs, if any, such negligence, if any, was that
26 of Plaintiffs' employers.

SIXTEENTH AFFIRMATIVE DEFENSE

52. GE alleges that Plaintiffs' claims, and each of them, and this action, are

1 preempted by federal statutes and regulations governing work place exposure to asbestos.

2 **SEVENTEENTH AFFIRMATIVE DEFENSE**

3 53. GE alleges that the products referred to in said complaint, if manufactured by GE
 4 at all, were manufactured in strict compliance with reasonably precise United States government
 5 specifications, and that the hazards associated with use of the products, if any, were known
 6 equally to the federal government and GE. Boyle v. United Technologies Corp., 487 U.S. 500
 7 (1988). Therefore, the complaint and all alleged causes of action are barred by the government
 8 contractor defense.

9 **EIGHTEENTH AFFIRMATIVE DEFENSE**

10 54. GE alleges that to the extent said complaint purports to state a cause of action or
 11 basis for recovery under Sindell v. Abbott Laboratories (1990) 26 Cal.3d 588, it is barred by
 12 Plaintiffs' failure to join as defendants the manufacturers of a substantial share of the asbestos
 13 products market, to which asbestos products Plaintiffs were allegedly exposed, thereby causing
 14 the damages alleged; and, should it prove impossible to identify the manufacturer of the product
 15 that allegedly injured Plaintiffs, said purported claim or cause of action is barred by the fault of
 16 Plaintiffs and their agents in making identification of the manufacturer impossible.

17 **NINETEENTH AFFIRMATIVE DEFENSE**

18 55. GE alleges that, to the extent said complaint purports to state a cause of action or
 19 basis for recovery upon lack of identification of the manufacturer of the alleged injury-causing
 20 product, it fails to state facts sufficient to constitute a cause of action in that Plaintiffs have
 21 asserted claims for relief which, if allowed, would contravene GE's constitutional rights to
 22 substantive due process of law, as preserved by the Fourteenth Amendment to the Constitution of
 23 the United States and by Article I, Section 7 of the Constitution of the State of California.

24 **TWENTIETH AFFIRMATIVE DEFENSE**

25 56. GE alleges that said complaint, to the extent that it seeks exemplary or punitive
 26 damages pursuant to California Civil Code Section 3294, violates GE's right to procedural due
 27 process under the Fourteenth Amendment of the United States Constitution, and Article I,

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1 Section 7 of the Constitution of the State of California, and therefore fails to state a cause of
 2 action upon which either punitive or exemplary damages can be awarded.

3 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

4 57. GE alleges that said complaint, to the extent that it seeks punitive or exemplary
 5 damages pursuant to California Civil Code Section 3294, violates GE's right to protection from
 6 "excessive fines" as provided in the Eighth Amendment of the United States Constitution and
 7 Article I, Section 17 of the Constitution of the State of California, and violates GE's right to
 8 substantive due process as provided in the Fifth and Fourteenth Amendments of the United States
 9 Constitution and the Constitution of the State of California, and therefore fails to state a cause of
 10 action supporting the punitive or exemplary damages claimed.

11 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

12 58. GE alleges that said complaint, and each cause of action therein, fails to state facts
 13 sufficient to warrant an award of punitive or exemplary damages against GE.

14 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

15 59. GE alleges that the "peculiar risk" doctrine is not applicable to the causes of
 16 action attempted to be stated and set forth against GE, because the injuries and damages
 17 complained of in the complaint, if any there were, arose in the course and scope of Plaintiffs'
 18 employment by an independent contractor.

19 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

20 60. GE alleges that at all relevant times, Plaintiffs' employers were sophisticated
 21 users of asbestos-containing products, and that said employers were aware of the dangers, if any,
 22 of asbestos-containing products, and that said employers' negligence in providing the products to
 23 their employees in a negligent, careless and reckless manner was a superseding intervening cause
 24 of Plaintiffs' injuries, if any.

25 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

26 61. GE alleges that Plaintiffs are barred from recovery in that all products produced
 27 by GE were in conformity with the existing state-of-the-art, and as a result, these products were
 28 not defective in any manner.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

62. GE alleges that it had no knowledge, either actual or constructive, and by the application of reasonable, developed human skills and foresight had no reason to know of the propensities, if any, of any product allegedly manufactured, supplied, applied and/or sold by GE to cause or contribute to the creation of medical conditions or circumstances involving alleged injuries to the lungs, respiratory and cardiovascular systems, including cancer, mesothelioma, or any other illness of any type whatsoever.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

63. GE alleges that the causes of action, if any, attempted to be stated and set forth in said complaint for negligence per se are barred by California Labor Code Section 6304.5, and derivative authority.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

64. GE alleges that Plaintiffs failed to exercise due diligence to mitigate their losses, injuries or damages, if any, and, accordingly, the amount of damages to which Plaintiffs are entitled, if any, should be reduced by the amount of damages which otherwise would have been mitigated.

TWENTY-NINTH AFFIRMATIVE DEFENSE

65. GE alleges that the provisions of California Civil Code Section 1431.2 are applicable to the Complaint and each cause of action therein.

THIRTIETH AFFIRMATIVE DEFENSE

66. GE alleges that unforeseen and unforeseeable acts and omissions by others constitute a superseding, intervening cause of Plaintiffs' injuries, if any.

THIRTY-FIRST AFFIRMATIVE DEFENSE

67. GE alleges that each of Plaintiffs' claims, and this entire action, are preempted by all applicable federal law relating to railroads, their equipment, and/or alleged injuries and damages arising therefrom, including but not limited to the Locomotive Boiler Inspection Act, 49 U.S.C. sections 20701 et seq.

THIRTY-SECOND AFFIRMATIVE DEFENSE

2 68. GE alleges that as a result of their injuries, Plaintiffs have received and will
3 continue to receive workers' compensation benefits from their employers or their insurance
4 carriers, or both, in an amount not yet definitely ascertained and determined; that the total
5 amount of these payments is not yet known to this defendant; that by virtue of the California
6 Labor Code sections 3850 and 3852, and related sections, the employers and their insurance
7 carriers are subrogated to the rights of the Plaintiffs for any and all monies Plaintiffs may receive
8 from this defendant up to the amount paid to Plaintiffs; that Plaintiffs' injuries arose as a direct
9 and proximate result of the negligence and carelessness of Plaintiffs' employers, and the
10 employers and their insurance carriers are not entitled to reimbursement for monies paid or to be
11 paid to Plaintiffs; and in the event of any judgment in favor of Plaintiffs and against this
12 defendant, it should be reduced by the amounts paid or to be paid to Plaintiffs by the employers
13 or their insurance carriers.

THIRTY-THIRD AFFIRMATIVE DEFENSE

15 69. The matters alleged in said complaint are encompassed within and barred by a
16 settlement and release agreement reached by the parties, which operates as a merger and bar
17 against any further litigation on matters raised or potentially raised in connection with the
18 settlement and release.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

20 70. To the extent that Plaintiffs have reached an accord with GE regarding this
21 litigation and this accord was then properly satisfied, the claims, causes of action, theories of
22 liability and matters alleged in said complaint are barred by the doctrine of accord and
23 satisfaction.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

25 71. GE contends that Plaintiffs have released, settled, entered into an accord and
26 satisfaction, or otherwise compromised their claims herein, and accordingly, said claims are
27 barred.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

72. The claims asserted in said complaint have been settled, compromised or otherwise discharged and GE is due a set off.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

73. To the extent that Plaintiffs have previously filed a dismissal in court dismissing with prejudice all of their asserted claims, causes of action , and other theories of liability against GE, the matters alleged in said complaint are barred by retraxit.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

74. Plaintiffs' claims herein are barred based on the primary right and res judicata doctrines which prohibit splitting a single cause of action into successive suits, and seeking new recovery for injuries for which the Plaintiffs were previously compensated by alleged joint tortfeasors.

THIRTY-NINTH AFFIRMATIVE DEFENSE

75. GE alleges that Plaintiffs do not assert any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences, and that no question of law or fact common to all the Plaintiffs will arise in this action, and that therefore Plaintiffs have been improperly joined in one action.

FORTIETH AFFIRMATIVE DEFENSE

76. Defendant alleges that at all relevant times Plaintiffs were sophisticated users of asbestos-containing products, that Plaintiffs were aware, or should have been aware, of the dangers, if any, of asbestos-containing products, and that the sophisticated user doctrine is a complete bar to Plaintiffs' claims against Defendant as a matter of law. Johnson v. American Standard, Inc., et al. (2005) 34 Cal.Rptr.3d 863.

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1 **PRAYER**
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3 WHEREFORE, GE prays that Plaintiffs take nothing by reason of their complaint as to
4 GE and that GE has judgment for its costs of suit and attorneys' fees and for such other and
5 further relief as this Court may deem just and proper.

6 DATED: June 15, 2007

7 SEDGWICK, DETERT, MORAN & ARNOLD LLP

8 By: /S/ Derek S. Johnson

9 Derek S. Johnson
10 Attorneys for Defendant
11 GENERAL ELECTRIC COMPANY

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1 **JURY DEMAND**

2 GE hereby demands a trial by jury of the captioned matter.

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4 DATED: June 15, 2007 SEDGWICK, DETERT, MORAN & ARNOLD LLP

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6 By: /S/ Derek S. Johnson

7 Derek S. Johnson
8 Attorneys for Defendant
GENERAL ELECTRIC COMPANY

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10 **CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

11 Pursuant to Civil Local Rule 3-16, the undersigned certifies that as of this date, other than
12 the named parties, there is no such interest to report.

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14 DATED: June 15, 2007 SEDGWICK, DETERT, MORAN & ARNOLD LLP

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16 By: /S/ Derek S. Johnson

17 Derek S. Johnson
18 Attorneys for Defendant
GENERAL ELECTRIC COMPANY